

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File No. EB-07-SE-138
Able Infosat Communications, Inc.	)	NAL/Acct. No. 200832100013
	)	FRN # 0001643568
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: January 28, 2008****Released: January 30, 2008**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture*, we find Able Infosat Communications, Inc. ("Able Infosat"), licensee of Very Small Aperture Terminal ("VSAT") system, earth station call sign E070072,<sup>1</sup> apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for operating its Canada-based satellite system in the United States without Commission authority, in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended ("Act")<sup>2</sup> and Section 25.102(a) of the Commission's Rules ("Rules").<sup>3</sup>

**II. BACKGROUND**

2. Able Infosat is a wholly-owned subsidiary of Infosat Communications, Inc. ("Infosat Canada"), a Canadian company that provides fixed and mobile satellite communications services in Canada reselling satellite communications capacity of Telesat Canada, Inmarsat, Mobile Satellite Ventures and Iridium.<sup>4</sup> According to Able Infosat, in the late 1990s, Infosat Canada established a U.S. subsidiary, Infosat US, to meet the mobile satellite needs of its customers doing business in the United States.<sup>5</sup> In 2006, Infosat Canada acquired Able Communications, Inc., a U.S. company in the business of providing

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<sup>1</sup> File No. SES-LIC-20070420-00491, granted May 29, 2007.

<sup>2</sup> 47 U.S.C. § 301.

<sup>3</sup> 47 C.F.R. § 25.102(a).

<sup>4</sup> Able Infosat and its parent company, Telesat Canada (a Canadian corporation, wholly owned by BCE, Inc.) were acquired on October 30, 2007, by Canadian Holding Company, 4363205 Canada Inc. *See In the Matter of BCE Inc. and Loral Skynet Corporation, Transferors/Assignors, and 4363205 Canada Inc., 4363213 Canada Inc., and Skynet Satellite Corporation, Transferees/Assignees, For Consent to Transfer of Control or Assignment of Licenses and Authorizations held by Telesat Canada, Able Infosat Communications, Inc., Loral Skynet Corporation, and Loral Skynet Network Services, Inc. and Petitions for Declaratory Ruling that the Transaction Is Consistent with Section 310(b)(4) of the Communications Act*, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd 18049 (2007) ("BCE/Holdco Transaction"). The BCE/Holdco Transaction was approved by the Commission on October 3, 2007 and consummated by the parties on October 30, 2007.

<sup>5</sup> See Letter from Joseph A. Godles, Esq., attorney for Able Infosat Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, September 7, 2007 ("Able Infosat Response").

two-way microwave radio equipment and services.<sup>6</sup> Following the acquisition in 2006, Able Communications, Inc.'s name was changed to Able Infosat, and Infosat US's satellite business was transferred to Able Infosat and consolidated with Able Infosat's two-way microwave business. Able Infosat's principal purpose remained that of Infosat US: to provide service to Infosat Canada's customers in the U.S.<sup>7</sup>

3. Able Infosat states that starting in October 2005, Infosat Canada began making remote terminals available to some of its customers for deployment at locations within the United States. The operation of these terminals was initiated without Commission authority,<sup>8</sup> an error for which Able Infosat states it accepts full responsibility.

4. According to Able Infosat, the fact that Infosat Canada's U.S. VSAT operations were not licensed came to the attention of its counsel on April 11, 2007, during a meeting with Commission staff that discussed matters regarding the proposed sale of Able Infosat's parent company, Telesat Canada and BCE Inc.<sup>9</sup> Upon advice of its counsel, Able Infosat filed an application on April 20, 2007 with the Commission for a VSAT license,<sup>10</sup> and at the same time submitted a request for special temporary authority (STA) to operate its VSAT system pending action on its license request.<sup>11</sup> In the STA request, Able Infosat disclosed its unauthorized operations. The International Bureau granted Able Infosat's VSAT license application on May 29, 2007, and concurrently dismissed the STA application as moot.<sup>12</sup> Able Infosat's VSAT license is a blanket license authorizing the company to deploy up to 10,000 remote units anywhere in the contiguous United States.

5. The Enforcement Bureau's Spectrum Enforcement Division issued Able Infosat a letter of inquiry ("LOI") on August 8, 2007.<sup>13</sup> In its September 7, 2007 Response to the LOI, Able Infosat admits that it failed to acquire a VSAT license from the Commission, and that it operated its station and the associated remote terminals without Commission authority.<sup>14</sup> Able Infosat explains that upon learning that Commission authority was required for the company's U.S. VSAT operations, it took immediate steps to apply for the requisite license and to request an STA to operate pending the grant of a new license application. In addition, Able Infosat states that it has implemented procedures to ensure that in the future, Commission authority is sought prior to commencing any operations for which Commission authority is

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<sup>6</sup> See File Nos. 0002477896 and 0002490705. The acquisition of Able Communications, Inc. by Infosat Canada was consummated on February 16, 2006.

<sup>7</sup> Able Infosat Response at 2.

<sup>8</sup> *Id.* at 3. Able Infosat states that operation of VSAT remote terminals in the United States began in October 2005 at various customer locations. The remote terminals were installed by Infosat Canada's customers. *Id.* at 5.

<sup>9</sup> *Id.* at 6.

<sup>10</sup> SES-LIC-20070420-00491.

<sup>11</sup> SES-STA-20070420-00493.

<sup>12</sup> See Actions Taken, Satellite Communications Services Information, Public Notice, Report No. SES-00932, May 30, 2007.

<sup>13</sup> Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Ed Mallet, General Manager, Able Infosat Communications (August 8, 2007).

<sup>14</sup> Able Infosat Response at 5.

required. Able Infosat now makes regulatory compliance an internal compulsory review process.<sup>15</sup>

### III. DISCUSSION

6. Section 301 of the Act and Section 25.102(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by an earth station except under and in accordance with a Commission granted authorization.

7. Able Infosat admits that it failed to file an application prior to commencing U.S. operations in October 2005. Moreover, Able Infosat admits that it continued to operate until it filed an STA request and an application on April 20, 2007. Thus, it appears that Able Infosat violated Section 301 of the Act and Section 25.102(a) of the Rules by operating its VSAT system in the United States without Commission authority.

8. Section 503(b) of the Act<sup>16</sup> and Section 1.80(a) of the Rules<sup>17</sup> provide that any person who willfully or repeatedly fails to comply with the provisions of the Act or the Rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term “willful” means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission’s rules, and “repeatedly” means more than once.<sup>18</sup> Based upon the record before us, it appears that Able Infosat’s violation of Section 301 of the Act and Section 25.102(a) of the Rules was willful and repeated.

9. In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act directs us to consider factors, such as “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>19</sup> Having considered the statutory factors, as explained below, we propose a total forfeiture of ten thousand dollars (\$10,000).

10. Section 1.80(b) of the Rules sets a base forfeiture amount of ten thousand dollars (\$10,000) for operation of a station without Commission authority.<sup>20</sup> Based on the record in this proceeding, we propose a forfeiture of \$10,000 for Able Infosat’s unauthorized operations. We do not find that any downward adjustments to this proposed forfeiture amount are appropriate. Although we have made downward adjustments in cases where a licensee has operated under color of authority or under an

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<sup>15</sup> *Id.* at 4.

<sup>16</sup> 47 U.S.C. § 503(b).

<sup>17</sup> 47 C.F.R. § 1.80(a).

<sup>18</sup> See 47 U.S.C. § 312(f)(1) & (2) (defining a “willful” violation as the “conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission,” and defining “repeated” as a violation that “continues for more than one day.”). The definition of willful and the definition of repeated apply to violations for which forfeitures are assessed under Section 503(b) of the Act. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied* 7 FCC Rcd 3454 (1992).

<sup>19</sup> 47 U.S.C. § 503(b)(2)(E). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures; *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>20</sup> 47 C.F.R. 1.80(b).

expired license,<sup>21</sup> we do not find such adjustment appropriate in this case. Able Infosat's unauthorized operation of its VSAT system was undertaken without any previous Commission authorization in violation of the Act and Commission rules.<sup>22</sup> Accordingly, we propose a \$10,000 forfeiture. We note that the proposed forfeiture relates to Able Infosat's apparent violations that occurred only within the past year, but takes into account that those apparent violations were continuous in nature.<sup>23</sup>

11. Nor do we find that a downward adjustment for good faith or voluntary disclosure is warranted. Although we have made downward adjustments in cases where a licensee made voluntary disclosure to Commission staff, and undertook corrective measures after learning of its violations but *prior* to any Commission inquiry or initiation of enforcement action,<sup>24</sup> that is not the case here. Able Infosat's disclosure concerning its VSAT operations in the United States was made during formal discussions with Commission staff concerning a proposed transaction. It was upon learning from staff that no authority had been obtained for its U.S. VSAT operations, and upon staff directive to file an application requesting Commission authority as soon as possible, that Able Infosat took corrective actions to come into compliance with Commission rules.

#### IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act<sup>25</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>26</sup> Able Infosat Communications, Inc. **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for the willful and repeated violation of Section 301 of the Act and Section 25.201(a) of the Rules.

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<sup>21</sup> See e.g., *Arnold Broadcasting Company, Inc.*, Forfeiture Order, 19 FCC Rcd. 14123, 14124, ¶ 10 (Enf. Bur. 2004), *recon. denied on other grounds*, 20 FCC Rcd. 10617 (Enf. Bur. 2005). See also, *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7438 (2004).

<sup>22</sup> See e.g., *Domtar Industries, Inc.*, 21 FCC Rcd. 13811 (Enf. Bur., Spectrum Enf. Div., 2006) (proposing the base forfeiture amount of \$10,000 for operating without Commission authorization and an upward adjustment of \$4,000 for unauthorized operations that spanned over a five-year period).

<sup>23</sup> Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6) prohibits the assessment of a forfeiture for violations that occurred more than a year prior to the issuance of the NAL, but does not bar us from taking into account the continuous nature of violations in determining the appropriate enforcement action and/or forfeiture amount. See, e.g., *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-72 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 RR 2d 1386, 1388 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 37, 37-38 (1967), *recon. denied*, 11 FCC 2d 193, 195 (1967); *Bureau D'Electronique Appliquee, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 3445, 3447-48 (Enf. Bur., Spectrum Enf. Div., 2005), *forfeiture ordered*, 20 FCC Rcd 17893 (Enf. Bur., Spectrum Enf. Div., 2005).

<sup>24</sup> See *Petracom of Texarkana, LLC*, Forfeiture Order, 19 FCC Rcd 8096, 8097-8098 (Enf. Bur., 2004). See also *Hare Planting Co., Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13517, 13520 (Enf. Bur., Spectrum Enf. Div., 2006), *forfeiture ordered*, 22 FCC Rcd 7530 (Enf. Bur., Spectrum Enf. Div., 2007) (adjusting a proposed forfeiture from \$6,500 to \$5,200 when the prior licensee made voluntary disclosures to Commission staff and undertook corrective actions *prior* to any Commission inquiry or initiation of enforcement action); *Jennie Stuart Medical Center*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 6888, 6890 (Enf. Bur., Spectrum Enf. Div., 2007) (adjusting a proposed forfeiture from \$6,500 to \$5,200 when the *prior* licensee made voluntary disclosures to Commission staff through its request for an STA and undertook corrective measures after learning of its violations prior to any Commission inquiry or initiation of enforcement action).

<sup>25</sup> 47 U.S.C. § 503(b).

<sup>26</sup> 47 C.F.R. §§ 0.111, 0.311 and 1.80.

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,<sup>27</sup> within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Able Infosat Communications, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture must be made by credit card through the Commission's Debt and Credit Management Center at (202) 418-1995, or by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. A request for full payment under an installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12<sup>th</sup> Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>28</sup>

15. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to Able Infosat Communications, Inc., Attention: Mr. Ed Mallet, General Manager, 5906 Broadway Street, Pearland, TX 77581, and its counsel, Joseph A. Godles, Esq., Goldberg, Godles, Wiener & Wright, 1229 Nineteenth Street, N.W., Washington, D.C. 20036-2413.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau

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<sup>27</sup> 47 C.F.R. § 1.80.

<sup>28</sup> See 47 C.F.R. § 1.1914.